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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,527	07/15/2003	August Puspurs		7484

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INVENTARIUM  
SUITE 1607  
4050 Rosemont Blvd.  
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CANADA

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/619,527

Applicant(s)

PUSPURS, AUGUST

Examiner

Jeffrey L. Gellner

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in-condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Drawings*

The drawings were received on 28 August 2004. These drawings are accepted.

### *Claim Objections*

Claims 9 and 14 are objected to because of the following informalities:

In claim 9, line 2, "and a connector section" should be --a connector section-- since it is the third element is a series of four elements.

In claim 9, line 5, after "connector" should be added --section-- to conform with the language of line 2 of claim 9.

In claim 9, line 6, the language "said side connector" should probably be --the side of said connector section-- or the "said side connector" lacks antecedent basis.

In claim 14, lines 3 and 4, "said stakes," "said top," "said holes," and "said connector section" lack antecedent bases.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 9-11, 13, 15, and 16 are rejected under 35 U.S.C. §102(b) as being anticipated by Zonavich et al. (US 4,540,160).

As to Claim 9, Zonavich et al. discloses a modular plant support system (Figs. 1-8) for plants comprising a tip (24 of Fig. 4), a stake (32 of Fig. 2), and a connector section (generally 29 and 25 of Fig. 2) and holes (26 and 27 of Fig. 2); the connector section being attached to the stake (see Fig. 2; col. 3 lines 54-57); the connector section being hollow (see Fig. 2) having a hole on top (shown in Fig. 2) to allow a stake to be inserted into the top of the connector section (in that the hole is capable of this function) and holes along the length of the connector section (26 and 27 of Fig. 2) to allow for insertion of stakes (either 22 of Fig. 1 or 32 of Fig. 2) therethrough in order to construct a structure (in that the holes are capable of this function).

As to Claim 10, Zonavich et al. further disclose a separate tip (24 of Fig. 4) which is releasably connected to the stake by a releasably connecting means (41 of Fig. 4).

As to Claim 11, Zonavich et al. further disclose the holes paired (see Figs. 1 and 2).

As to Claim 13, Zonavich et al. further disclose the stakes having different lengths (22 and 32 of Figs. 1 and 2, respectively)

As to Claim 15, Zonavich et al. further disclose the connector being round in shape (Fig. 9).

As to Claim 16, Zonavich et al. further disclose the connector being square in shape (Fig. 2).

As to claim 14, MPEP 2133 "Product-by-Process Claims" states that "If the product in the product -by-process claim is the same as or obvious from a product of the prior art, the claim

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is unpatentable even though the prior art product was made by a different process. Here, the plant support system is anticipated by Znavich et al. The process by which the system is assembled is not a patentable distinction.

***Claim Rejections - 35 USC §103***

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. §103(a) as being unpatentable over Znavich et al. (US 4,540,160).

As to Claim 12, the limitations of Claim 10 are disclosed as described above. Not disclosed is the tip releasable means consisting of two generally arrow shaped clips which engage suitably configured and sized notches hollowed out in the stake. However, because arrow shaped clips and screw type nut and bolt (of Znavich et al.) were art-recognized equivalents at the time of the invention in those plant supports where it is immaterial as to the exact type of attaching means, it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute arrow shaped clips for the screw type nut and bolt in Znavich et al.

### ***Response to Arguments***

Applicant's arguments originally filed 17 December 2004 have been fully considered but they are not persuasive. The crux of Applicant's arguments are: (1) Zonavich et al. discloses fences and building of fences which are nonanalogous art to the instant invention (Remarks at section of "Claims"); (2) The instant invention shows in Fig. 5 that stakes can pass through the connector section which differs from the disclosure of Zonavich et al. (Remarks at section of "Claims"); and, (3) The instant invention has perpendicularly set receiving holes so as to turn corners (Figs. 6 and 7) while Zonavich et al. disclose a linear fence not capable of turning corners (Remarks at section of "Claims").

As to argument (1), all the claims except claim 12 are rejected under 35 USC 102. Under this rejection the claim language is anticipated and, therefore, whether the art is analogous or not analogous is not germane (see MPEP 2131.05 Nonanalogous Art). the limitation of claim 12 does not deal with fences or plant supports but attachment means so here, also, whether the art is analogous or not analogous is not germane.

As to argument (2), the plain language of claim 9 at lines 6-7 states that the connector section is made "to allow for insertion of stakes therethrough." Zonavich et al. is capable of allowing for the insertion of stakes therethrough.

As to argument (3), Applicant does not claim this limitation in the instant set of claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

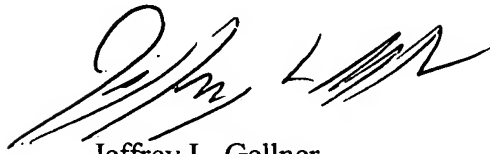
Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053 (after 4 April 2005 use: 571.272.6887). The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.

A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner